

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 12th day of September, two thousand six.

PRESENT:

HON. JON O. NEWMAN,  
HON. JOSÉ A. CABRANES,  
HON. RICHARD C. WESLEY,  
*Circuit Judges.*

Hui Chen,

*Petitioner,*

-v.-

No. 05-1822-ag  
NAC

Alberto R. Gonzales,

*Respondent.*

FOR PETITIONER: Lilin M. Ciccarone, Ciccarone Ma & Associates, New York, New York.

FOR RESPONDENT: David L. Huber, United States Attorney, Monica Wheatley, Assistant United States Attorney, Louisville, Kentucky.

UPON DUE CONSIDERATION, of this petition for review of the Board of Immigration Appeals (“BIA”) decision it is hereby ORDERED, ADJUDGED, AND DECREED that the

1 petition for review is DENIED.

2 Petitioner Hui Chen, a native and citizen of China, seeks review of a March 24, 2005  
3 order of the BIA denying Chen's motion to reopen. *In re Hui Chen*, No. A 70 699 545 (B.I.A.  
4 March 24, 2005). In a previous decision, the BIA affirmed an Immigration Judge's ("IJ")  
5 determination that Chen did not merit asylum and withholding of removal relief. *In re Hui Chen*,  
6 No. A 70 699 545 (B.I.A. January 9, 2003), *aff'g* No. A 70 699 545 (Immig. Ct. N.Y. City  
7 August 29, 2000). We assume the parties' familiarity with the facts and procedural history of this  
8 case.

9 This Court reviews the BIA's denial of a motion to reopen for abuse of discretion. *See*  
10 *Kaur v. BIA*, 413 F.3d 232, 233 (2d Cir. 2005). An abuse of discretion may be found where the  
11 BIA's decision "provides no rational explanation, inexplicably departs from established policies,  
12 is devoid of any reasoning, or contains only summary or conclusory statements; that is to say,  
13 where the Board has acted in an arbitrary or capricious manner." *Id.* at 233-34.

14 Chen concedes that her motion to reopen was untimely. She challenges only the BIA's  
15 failure to reopen her case *sue sponte*. However, this Court lacks jurisdiction to review a decision  
16 of the BIA not to reopen a case *sua sponte* under 8 C.F.R. § 1003.2(a), because such a decision is  
17 "entirely discretionary." *Azmond Ali v. Gonzales*, 448 F.3d 515, 518 (2d Cir. 2006).

18 For the foregoing reasons, the petition for review is DENIED. Having completed our  
19 review, any stay of removal that the Court previously granted in this petition is VACATED, and  
20 any pending motion for a stay of removal in this petition is DENIED as moot. Any pending  
21 request for oral argument in this petition is DENIED in accordance with Federal Rule of  
22 Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

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FOR THE COURT:

Roseann B. MacKechnie, Clerk

By: \_\_\_\_\_